

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1223

By: Thomas

AS INTRODUCED

An Act relating to trusts; setting policy of Oklahoma for certain trusts created to supplement certain state or federal benefits or shelter monies from certain considerations and use; providing for use of certain funds; making certain trusts void; providing for criteria; defining terms; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.56 of Title 60, unless there is created a duplication in numbering, reads as follows:

It is the policy of the State of Oklahoma that trusts, or similar legal devices, created for the purpose of supplementing benefits received through a public assistance program such as Food Stamps, Aid to Families with Dependent Children or Medicaid shall be void.

Furthermore, it is the public policy of the State of Oklahoma that the settlor or grantor shall not create a trust whose purpose is to shelter monies from consideration by the Department of Human Services in the operation of a public assistance program such as

Food Stamps, Aid to Families with Dependent Children or Medicaid. Such a trust is void as a matter of public policy.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 164.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Funds held in a discretionary trust are an available resource for purposes of public assistance programs such as Food Stamps, Aid to Families with Dependent Children and Medicaid.

B. Any trust is void as a matter of public policy if such trust contains:

1. An exculpatory clause;

2. A clause which purpose is to shelter monies or prevent monies from being considered available resources or income by the Department of Human Services in determining eligibility for a public assistance program; or

3. A clause, which purpose is to supplement benefits provided through a public assistance program.

C. For purposes of this section:

1. "Discretionary trust" means a trust in which the trustee has express or implicit authority to determine whether, when or in what amounts distributions will be made to beneficiaries of the trust; and

2. "Exculpatory clause" is a clause which expressly or implicitly restricts the use of funds that could otherwise prevent eligibility for public assistance benefits administered by the Department of Human Services, or limits a trustee's authority regarding distribution of funds to actions that would not diminish a trust beneficiary's receipt or potential receipt of public assistance benefits administered by the Department of Human Services.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-5754

KSM